the business, and showing that each had contributed something to its capital and *possessed a definite interest in the business*, is sufficient to constitute them partners as to third persons, irrespective of their agreement not to be partners, and that the liability of one of them was to be limited to a certain amount.

The rule in New York as to what constitutes a partnership is evidently construed much more broadly than in most other States, as is shown in the case of *Roper* v. *Shaefer*, 35 Mo. Atl. 30, where it was held, on practically the same state of facts, that a partnership as to third parties did not exist. This latter is the more modern rule. 17 *Am. & Eng. Enc.* 878, and is being followed by most of the States.

PATENTS—INFRINGEMENT—SALE OF INFRINGING ARTICLE, 99 Fed. 568.—The defendant collected the various parts of a machine infringing a patent, and then sold them at a profit to the co-defendant, a corporation. He was subsequently hired by the corporation to set up the completed machine. *Held*, that he was liable as an infringer.

The decision disregards the case of *Nickel Co.* v. *Worthington* (*C. C.*), 13 Fed. 393, and follows the principle that a person cannot retreat behind a corporation and escape liability for infringements in which he actively participates. *Cash Register Co.* v. *Leland*, 94 Fed. 502; *Nat. Car Brake Co.* v. *Terre Haute Manufacturing Co.*, 19 Fed. 514. The gist of the decision is that everyone who has made a separate profit out of the sale of infringing goods is held liable. *Cramer* v. *Fry*, 68 Fed. 201; *Maltby* v. *Bobo*, 53 Fed., cases No. 8, 998.

PRACTICE—BURDEN OF PROOF—GOOD FAITH—GOWING ET AL. V. WARNER ET AL., 62 N. Y., Sup. 797.—Plaintiff sold goods to Gerrish & Co. upon the latter's false and fraudulent representations of its ability to pay. The goods were then sold to defendants, and this action brought to recover possession or their value. *Held*, burden of proof was on defendants to show good faith and not a part of plaintiffs *prima facie* case to prove the contrary.

The presumption of the *bona fide* character of an act does not maintain where the fact of good faith is a material fact in a civil defense. *Devoe* v. *Brant*, 53 N. Y. 462; *McKelvey on Evi*, § 54; *Easter et al.* v. *Allen 8*, *Allen 7*.

PRACTICE—CONCLUSIVENESS OF SHERIFF'S RETURN—TAYLOR V. WELSLAGER, 45 Atl. Rep. 476 (Md.).—Where defendant claimed that the sheriff, after serving her, returned and told her not to appear, that he made a mistake in serving her. *Held*, sheriff's return of service conclusive. *Bennethum* v. *Bowers*, 133 Pa. St. 332.

PRIZE—SALE OF ENEMY'S VESSELS TO NEUTRALS, 20 S. C. 489.—At the beginning of the Spanish-American war, de Massa, a Spanish subject, made a transfer of the steamer Benito Estenger to Beattie, a subject of Great Britain. Shortly after, as the vessel was on a voyage to Kingston, she was captured by a U. S. patrol and taken to Key West, where she was duly libelled. *Held*, that the vessel was a lawful prize of war.

Formerly transfers of vessels "flagrante bello" were held invalid. Even now in France this rule is stringently enforced. England and the United States have departed from the principle, however, and admit the validity of the sale. The circumstances attending the transfer in this case, however, viz.: the conflicting statements as to price, the remaining of the Spanish master and crew in charge of the vessel, the withholding of a certain interest by the former owner, etc., clearly showed the presence of fraudulent intent and the use of the transfer as a protection against Spanish capture. The *January*, 4 C. Rob. 31; the *Omnibus*, 6 C. Rob. 70. J. J. Shiras, White and Peckham dissented.